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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916

No. 585

JAMES H. MULFORD ET AL.,

Appellants,

vs.

NAT SMITH ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA.

STATEMENT AS TO JURISDICTION.

A. J. Little,
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INDEX.

Subject Index.

	Page
tatement as to jurisdiction	1
Statutory provision sustaining jurisdiction	1
Statute the validity of which is involved	2
Date of the decree and application for appeal	19
Nature of the case and rulings below	20
xhibit "A"—Opinion of the District Court of the United States for the Middle District of Georgia	21

Statutes Cited.

ct of Congress of August 24, 1937, Public Number 352, 75th Congress, 50 Stat. 752, 28 U. S. C. A. 380a	2
ct of Congress of February 16, 1938, Public Number 430, 75th Congress, 52 Stat. 31, as amended 7 U. S. C. 1281	2

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

IN EQUITY

No. 97

JAMES H. MULFORD ET AL.,

Plaintiffs,

vs.

NAT SMITH ET AL., ORIGINAL DEFENDANTS, AND UNITED STATES OF AMERICA, INTERVENING DEFENDANT.

JURISDICTIONAL STATEMENT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, James H. Mulford *et al.*, plaintiffs-appellants in the above entitled cause, present the following statement in connection with their petition for the allowance of an appeal to the Supreme Court of the United States from the decree entered herein on October 7, 1938:

(a) The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Sec-

tion 3 of the Act of August 24, 1937, Public Number 352, 75th Congress, 50 Stat. 752, U. S. C. A., Title 28, Section 380 (a).

(b) There is involved in this case the validity of certain provisions of the Act of Congress, approved February 16, 1938, Public Number 430, 75th Congress, 52 Stat. 31, as amended, U. S. C. A., Title 7, Sections 1281, *et seq.*, the pertinent provisions of which read as follows:

Declaration of Policy.

Sec. 2. It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

Title III—Loans, Parity Payments, Consumer Safeguards, and Marketing Quotas.

Subtitle A—Definitions, Loans, Parity Payments, and Consumer Safeguards.

Definitions.

Sec. 301. (a) General Definitions.—For the purposes of this title and the declaration of policy—

(1) "Parity", as applied to prices for any agricultural commodity, shall be that price for the commodity which will

to the commodity a purchasing power with respect to
les that farmers buy equivalent to the purchasing
er of such commodity in the base period; and, in the case
ll commodities for which the base period is the period
ust 1909 to July 1914, which will also reflect current
rest payments per acre on farm indebtedness secured by
estate, tax payments per acre on farm real estate, and
ght rates, as contrasted with such interest payments, tax
nents and freight rates during the base period. The
period in the case of all agricultural commodities ex-
tobacco shall be the period August 1909 to July 1914,
in the case of tobacco, shall be the period August 1919
ly 1929.

) "Parity", as applied to income, shall be that per
a net income of individuals on farms from farming
ations that bears to the per capita net income of indi-
als not on farms the same relation as prevailed during
eriod from August 1909 to July 1914.

) The term "interstate and foreign commerce" means
marketing, trade, and traffic between any State or
itory or the District of Columbia or Puerto Rico, and
lace outside thereof: or between points within the same
e or Territory or within the District of Columbia or
to Rico, through any place outside thereof; or within
Territory or within the District of Columbia or Puerto

) The term "affect interstate and foreign commerce"
s, among other things, in such commerce, or to burden
obstruct such commerce or the free and orderly flow
of; or to create or tend to create a surplus of any agri-
ral commodity which burdens or obstruct such com-
e or the free and orderly flow thereof.

) The term "United States" means the several States
Territories and the District of Columbia and Puerto

) The term "State" includes a Territory and the Dis-
of Columbia and Puerto Rico.

(7) The term "Secretary" means the Secretary of Agriculture, and the term "Department" means the Department of Agriculture.

(8) The term "person" means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State.

(b) Definitions Applicable to One or More Commodities.—For the purposes of this title—

(3) (C) "Carry-over" of tobacco for any marketing year shall be the quantity of such tobacco on hand in the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current, except that in the case of cigar-filler and cigar-binder tobacco the quantity of type 46 on hand and theretofore produced in the United States during such calendar year shall also be included.

(6) (A) "Market", in the case of cotton, wheat, and tobacco, means to dispose of by sale, barter, or exchange, but, in the case of wheat, does not include disposing of wheat as premium to the Federal Crop Insurance Corporation under Title V.

(D) "Marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used.

(7) "Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

Tobacco (flue-cured), July 1-June ;
Tobacco (other than flue-cured), October 1-September 30;

(10) (B) The "normal supply" of tobacco shall be a normal year's domestic consumption and exports plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports as an allowance for a normal carry-over.

(11) (B) "Normal year's domestic consumption", in the case of cotton and tobacco, shall be the yearly average quan-

tity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

(12) "Normal year's exports" in the case of corn, cotton, rice, tobacco, and wheat shall be the yearly average quantity of the commodity produced in the United States that was exported from the United States during the ten marketing years (or, in the case of rice, the five marketing years) immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

(14) (B) "Reserve supply level" of tobacco shall be the normal supply plus 5 per centum thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

(15) "Tobacco" means each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 of the Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured and dark air-cured tobacco, comprising types 21, 22, 23, 24, 35, 36, and 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55;
Cigar-filler tobacco, comprising type 41.

The provisions of this title shall apply to each of such kinds of tobacco severally.

(16) (B) "Total supply" of tobacco for any marketing year shall be the carry-over at the beginning of such marketing year plus the estimated production thereof in the United States during the calendar year in which such marketing year begins, except that the estimated production of

type 46 tobacco during the marketing year with respect to which the determination is being made shall be used in lieu of the estimated production of such type during the calendar year in which such marketing year begins in determining the total supply of cigar-filler and cigar-binder tobacco.

(c) The latest available statistics of the Federal Government shall be used by the Secretary in making the determinations required to be made by the Secretary under this Act.

Consumer Safeguards.

Sec. 304. The powers conferred under this Act shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this Act it shall be the duty of the Secretary to give due regard to the maintenance of a continuous and stable supply of agricultural commodities from domestic production adequate to meet consumer demand at prices fair to both producers and consumers.

Subtitle B—Marketing Quotas.

Part I.—Marketing Quotas—Tobacco.

Legislative Finding.

Sec. 311 (a) The marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare. Tobacco produced for

market is sold on a Nation-wide market and, with its products, moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer. The farmers producing such commodity are subject in their operations to uncontrollable natural causes, are widely scattered throughout the Nation, in many cases such farmers carry on their farming operations on borrowed money or leased lands, and are not so situated as to be able to organize effectively, as can labor and industry through unions and corporations enjoying Government protection and sanction. For these reasons, among others, the farmers are unable without Federal assistance to control effectively the orderly marketing of such commodity with the result that abnormally excessive supplies thereof are produced and dumped indiscriminately on the Nation-wide market.

(b) The disorderly marketing of such abnormally excessive supplies affects, burdens, and obstructs interstate and foreign commerce by (1) materially affecting the volume of such commodity marketed therein, (2) disrupting the orderly marketing of such commodity therein, (3) reducing the price for such commodity with consequent injury and destruction of interstate and foreign commerce in such commodity, and (4) causing a disparity between the prices for such commodity in interstate and foreign commerce and industrial products therein, with a consequent diminution of the volume of interstate and foreign commerce in industrial products.

(c) Whenever an abnormally excessive supply of tobacco exists, the marketing of such commodity by the producers thereof directly and substantially affects interstate and foreign commerce in such commodity and its products, and the operation of the provisions of this Part becomes necessary and appropriate in order to promote, foster, and maintain an orderly flow of such supply in interstate and foreign commerce.

National Marketing Quota.

Sec. 312. (a) Whenever, on the 15th day of November of any calendar year, the Secretary finds that the total supply

of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor, the Secretary shall proclaim the amount of such total supply, and, beginning on the first day of the marketing year next following and continuing throughout such year, a national marketing quota shall be in effect for the tobacco marketed during such marketing year. The Secretary shall also determine and specify in such proclamation the amount of the national marketing quota in terms of the total quantity of tobacco which may be marketed, which will make available during such marketing year a supply of tobacco equal to the reserve supply level. Such proclamation shall be made not later than the 1st day of December in such year.

(b) Whenever in the case of burley tobacco, and fire-cured and dark air-cured tobacco, respectively, the total supply proclaimed pursuant to the provisions of subsection (a) of this section exceeds the reserve supply level by more than 5 per centum and a national marketing quota is not in effect for such tobacco during the marketing year then current, a national marketing quota shall also be in effect for such tobacco marketed during the period from the date of such proclamation to the end of such current marketing year, and the Secretary shall determine and shall specify in such proclamation the amount of such national marketing quota in terms of the total quantity which may be marketed, which will make available during such current marketing year a supply of tobacco equal to the reserve supply level. The provisions of this subsection shall not be effective prior to the beginning of the marketing year beginning in the calendar year 1938.

(c) Within thirty days after the date of the issuance of the proclamation specified in subsection (a) of this section, the Secretary shall conduct a referendum of farmers who were engaged in production of the crop of tobacco harvested prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quota. If in the case of burley tobacco, or fire-cured and dark air-cured tobacco, respectively, farmers would be subject to a national quota for the next succeeding marketing year pur-

suant to the provisions of subsection (a) of this section, and also to a national marketing quota for the current marketing year pursuant to the provisions of subsection (b) of this section, the referendum shall provide for voting with respect to each such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the 1st day of January, proclaim the result of the referendum and such quota shall not be effective thereafter.

(d) In connection with the determination and proclamation of any marketing quota for the 1938-1939 marketing year, the determination by the Secretary pursuant to subsection (a) of this section shall be made and proclaimed within fifteen days following the date of the enactment of this Act, and the proclamation of the Secretary pursuant to subsection (c) of this section shall be made within forty-five days following the date of the enactment of this Act.

(e) Marketing quotas shall not be in effect with respect to cigar-filler tobacco comprising type 41 during the marketing year beginning in 1938 or the marketing year beginning in 1939.

(f) Notwithstanding any other provisions of this Act, the Secretary shall, within fifteen days after the enactment of this subsection (f), proclaim the amount of the total supply of burley tobacco for the marketing year therefor beginning October 1, 1937, and a national marketing quota shall be in effect for burley tobacco marketed during the marketing year for such tobacco beginning October 1, 1938. The Secretary shall also determine and specify in such proclamation the amount of such national marketing quota in terms of the total quantity of such tobacco which may be marketed, which will make available during the marketing year beginning October 1, 1938, a supply of such tobacco equal to the reserve supply level. The referendum with respect to such quota, pursuant to subsection (c) of this section, shall be held and the results thereof proclaimed within forty-five days after the enactment of this subsection (f).

Sec. 313. (a) The national marketing quota for tobacco established pursuant to the provisions of section 312, less

the amount to be allotted under subsection (c) of this section, shall be apportioned by the Secretary among the several States on the basis of the total production of tobacco in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period: Provided, however, That to prevent in any case too sharp and sudden reduction in acreage of tobacco production in any State, the marketing quota for flue-cured tobacco for any State for any marketing year shall not be reduced to a point less than 75 per centum of the production of flue-cured tobacco in such State for the year 1937.

(b) The Secretary shall provide, through the local committees, for the allotment of the marketing quota for any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: Provided, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years.

(c) The Secretary shall provide, through local committees, for the allotment of not in excess of 5 per centum of

the national marketing quota (1) to farms in any State whether it has a State quota or not on which for the first time in five years tobacco is produced to be marketed in the year for which the quota is effective and (2) for further increase of allotments to small farms pursuant to the proviso in subsection (b) of this section on the basis of the following: Land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco: Provided, That farm marketing quotas established pursuant to this subsection for farms on which tobacco is produced for the first time in five years shall not exceed 75 per centum of the farm marketing quotas established pursuant to subsection (b) of this section for farms which are similar with respect to the following: Land, labor, and equipment available for the production of tobacco, crop-rotation practices, and the soil and other physical factors affecting the production of tobacco.

(d) Farm marketing quotas may be transferred only in such manner and subject to such conditions as the Secretary may prescribe by regulations.

(e) In case of flue-cured tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition to the State poundage allotment a poundage not in excess of 4 per centum of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under the Agricultural Adjustment Act of 1938 which the Secretary determines are inadequate in view of past production of tobacco, and for each year by a number of pounds sufficient to assure that any State receiving a State poundage allotment of flue-cured tobacco shall receive a minimum State poundage allotment of flue-cured tobacco equal to the average national yield for the preceding five years of five hundred acres of such tobacco.

(f) In the case of fire-cured and dark air-cured and burley tobacco, the national quota for 1938 is increased by a number of pounds required to provide for each State in addition

to the State poundage allotment a poundage not in excess of 2 per centum of the allotment which shall be apportioned in amounts which the Secretary determines to be fair and reasonable to farms in the State receiving allotments under this section which the Secretary determines are inadequate in view of past production of tobacco.

Penalties.

Sec. 314. The marketing of any tobacco in excess of the marketing quota for the farm on which the tobacco is produced, except the marketing of any such tobacco for nicotine or other byproduct uses, shall be subject to a penalty of 50 per centum of the market price of such tobacco on the date of such marketing, or, if the following rates are higher, 3 cents per pound in the case of flue-cured, Maryland, or burley, and 2 cents per pound in the case of all other kinds of tobacco. Such penalty shall be paid by the person who acquires such tobacco from the producer but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marketed by sale; or, if the tobacco is marketed by the producer through a warehouseman or other agent, such penalty shall be paid by such warehouseman or agent who may deduct an amount equivalent to the penalty from the price paid to the producer: Provided, That in case any tobacco is marketed directly to any person outside the United States the penalty shall be paid and remitted by the producer.

Subtitle C—Administrative Provisions.

Part I.—Publication and Review of Quotas.

Application of Part.

Sec. 361. This Part shall apply to the publication and review of farm marketing quotas established for tobacco, corn, wheat, cotton and rice, established under subtitle B.

Publication and Notice of Quota.

Sec. 362. All acreage allotments, and the farm marketing quotas established for farms in a county or other local administrative area shall, in accordance with regulations

of the Secretary, be made and kept freely available for public inspection in such county or other local administrative area. An additional copy of this information shall be kept available in the office of the county agricultural extension agent or with the chairman of the local committee. Notice of the farm marketing quota of his farm shall be mailed to the farmer.

Review by Review Committee.

Sec. 363. Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in Section 362, have such quota reviewed by a local review committee composed of three farmers appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

Review Committee.

Sec. 364. The members of the review committee shall receive as compensation for their services the same per diem as that received by the members of the committee utilized for the purposes of the Soil Conservation and Domestic Allotment Act, as amended. The members of the review committee shall not be entitled to receive compensation for more than thirty days in any one year.

Institution of Proceedings.

Sec. 365. If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall

be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

Court Review.

Sec. 366. The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

Stay of Proceedings and Exclusive Jurisdiction.

Sec. 367. The commencement of judicial proceedings under this Part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this Part to review the legal validity of a determination made by a review committee pursuant to this Part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this Part.

No Effect on Other Quotas.

Sec. 368. Notwithstanding any increase of any farm marketing quota for any farm as a result of review of the determination thereof under this Part, the marketing quotas for other farms shall not be affected.

Part II.—Adjustment of Quotas and Enforcement.

General Adjustments of Quotas.

Sec. 371. (a) If at any time the Secretary has reason to believe that in the case of corn, wheat, cotton, rice, or tobacco the operation of farm marketing quotas in effect will cause the amount of such commodity which is free of marketing restrictions to be less than the normal supply for the marketing year for the commodity then current, he shall cause an immediate investigation to be made with respect thereto. In the course of such investigation due notice and opportunity for hearing shall be given to interested persons. If upon the basis of such investigation the Secretary finds the existence of such fact, he shall proclaim the same forthwith. He shall also in such proclamation specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such commodity which is free of marketing restrictions equal the normal supply.

(b) If the Secretary has reason to believe that, because of a national emergency or because of a material increase

in export demand, any national marketing quota for c
wheat, cotton, rice, or tobacco should be increased or te
nated, he shall cause an immediate investigation to be m
to determine whether the increase or termination is ne
sary in order to effectuate the declared policy of this
or to meet such emergency or increase in export dem
If, on the basis of such investigation, the Secretary fi
that such increase or termination is necessary, he shall
mediately proclaim such finding (and if he finds an incre
is necessary, the amount of the increase found by him to
necessary) and thereupon such quota shall be increased,
shall terminate, as the case may be.

(c) In case any national marketing quota for any c
modity is increased under this section, each farm market
quota for the commodity shall be increased in the same ra

Payment and Collection of Penalties.

Sec. 372. (a) The penalty with respect to the marketi
by sale, of wheat, cotton, or rice, if the sale is to any per
within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be c
lected and paid in such manner, at such times, and un
such conditions as the Secretary may by regulations p
scribe. Such penalties shall be remitted to the Secretary
the person liable for the penalty, except that if any other p
son is liable for the collection of the penalty, such other p
son shall remit the penalty. The amount of such penalt
shall be covered into the general fund of the Treasury
the United States.

(c) Whenever, pursuant to a claim filed with the Sec
tary within one year after payment to him of any penal
collected from any person pursuant to this Act, the Sec
tary finds that such penalty was erroneously, illegally,
wrongfully collected, the Secretary shall certify to the S
retary of the Treasury for payment to the claimant, in a
cordance with regulations prescribed by the Secretary of t
Treasury, such amount as the Secretary finds the claima
is entitled to receive as a refund of such penalty.

The Secretary is authorized to prescribe regulations governing the filing of such claims and the determination of such refunds.

(d) No penalty shall be collected under this Act with respect to the marketing of any agricultural commodity grown for experimental purposes only by any publicly owned agricultural experiment station.

Reports and Records.

Sec. 373. (a) This subsection shall apply to warehousemen, processors, and common carriers of corn, wheat, cotton, rice, or tobacco, and all ginners of cotton, all persons engaged in the business of purchasing corn, wheat, cotton, rice, or tobacco from producers, and all persons engaged in the business of redrying, prizing, or stemming tobacco for producers. Any such person shall, from time to time on request of the Secretary, report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of this title. Such information shall be reported and such records shall be kept in accordance with forms which the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is hereby authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as he has reason to believe are relevant and are within the control of such person. Any such person failing to make any report or keep any record as required by this subsection or making any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

(b) Farmers engaged in the production of corn, wheat, cotton, rice, or tobacco for market shall furnish such proof of their acreage, yield, storage, and marketing of the commodity in the form of records, marketing cards, reports, storage under seal, or otherwise as the Secretary may prescribe as necessary for the administration of this title.

(c) All data reported to or acquired by the Secretary pursuant to this section shall be kept confidential by all officers and employees of the Department, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under this title.

Regulation.

Sec. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title.

Court Jurisdiction.

Sec. 376. The several district courts of the United States are hereby vested with jurisdiction specifically to enforce the provisions of this title. If and when the Secretary shall so request, it shall be the duty of the several district attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this title. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law.

Utilization of Local Agencies.

Sec. 388. (a) The provisions of section 8 (b) and section 11 of the Soil Conservation and Domestic Allotment Act, as amended, relating to the utilization of State, county, local committees, the extension service, and other approved agencies, and to recognition and encouragement of cooperative associations, shall apply in the administration of this Act; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended. The local administrative areas designated under section 8 (b) of the Soil

Conservation and Domestic Allotment Act, as amended, for the administration of programs under that Act, and the local administrative areas designated for the administration of this Act shall be the same.

Personnel.

Sec. 389. The Secretary is authorized and directed to provide for the execution by the Agricultural Adjustment Administration of such of the powers conferred upon him by this Act, as he deems may be appropriately exercised by such Administration; and for such purposes the provisions of law applicable to appointment and compensation of persons employed by the Agricultural Adjustment Administration shall apply.

Separability.

Sec. 390. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances, and the provisions of the Soil Conservation and Domestic Allotment Act, as amended, shall not be affected thereby. Without limiting the generality of the foregoing, if any provision of this Act should be held not to be within the power of the Congress to regulate interstate and foreign commerce, such provision shall not be held invalid if it is within the power of the Congress to provide for the general welfare or any other power of the Congress. If any provision of this Act for marketing quotas with respect to any commodity should be held invalid, no provision of this Act for marketing quotas with respect to any other commodity shall be affected thereby. If the application of any provision for a referendum should be held invalid, the application of other provisions shall not be affected thereby. If by reason of any provision for a referendum the application of any such other provision to any person or circumstance is held invalid, the application of such other provision to other persons or circumstances shall not be affected thereby.

(c) The final decree of the Statutory District Court for the Middle District of Georgia, a review of which is sought

by the appeal herein, was signed October 5, 1938, and entered October 7, 1938, and the application for appeal is presented contemporaneously with the presentation of this statement, to wit, on the 18th day of October, 1938.

(d) The nature of the case and of the rulings of the said Statutory District Court, which are deemed to bring the case within the jurisdictional provisions relied on, are as follows:

Plaintiffs-appellants herein, by their bill of complaint, seek interlocutory and permanent injunctions suspending or restraining the enforcement, operation and execution of, and setting aside in whole or in part, the provisions of the Act of Congress set forth in paragraph (b) above, upon the grounds that such Act and said parts thereof are repugnant to the Constitution of the United States. The said decree appealed from denies the interlocutory and permanent injunctions sought in said bill of complaint and dismisses the said bill of complaint.

(e) There is appended hereto a copy of the opinion delivered by the said Statutory Court upon the rendering of the decree sought to be reviewed, such opinion being the only opinion rendered in this case.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 8 of the said Act of Congress of August 24, 1937, U. S. C. A., Title 28, Section 380(a).

Respectfully submitted,

A. J. LITTLE,
C. A. AVRIETT,
J. L. BLACKWELL,
L. E. HEATH,
Attorneys for Plaintiffs-Appellants.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD *et al.*, *Plaintiffs*,

vs.

NAT SMITH *et al.*, *Original Defendants*, and UNITED STATES OF AMERICA, *Intervening Defendant*.

The plaintiffs, numerous producers of tobacco in Georgia and Florida, brought in a State court a bill *quia timet* against the defendants, the tobacco warehousemen doing business in Valdosta, Ga., to and through whom the plaintiffs intended to market their tobacco in the selling season of August, 1938, to enjoin the defendants from retaining and paying over to the United States as a penalty one-half of the purchase price of tobacco marketed in excess of the several quotas of the plaintiffs fixed under Sections 311, 312 and 314 of the Agricultural Adjustment Act of 1938. The cause was removed to this court as one arising under a law regulating commerce. 28 U. S. C. A. 41 (8). The bill was amended to seek a decree declaring unconstitutional and void the said sections of the Agricultural Adjustment Act as beyond the power of Congress, and as delegating legislative power to the Secretary of Agriculture, and especially as applied to the crop of 1938 because operating to take property without due process of law. The United States intervened to defend the Act. The case was submitted to a court of three judges upon a stipulation of the evidentiary facts.

Findings of Fact.

The facts as stipulated are true. The important conclusions are:

The plaintiffs have each marketed in August, 1938, tobacco produced by them in excess of quotas for this season fixed for their several farms pursuant to the Agricultural Adjustment Act and the Regulations made under it by the Secretary of Agriculture. No complaint is made of the fairness of the quotas if there was authority to make quotas. The penalties for the excess marketing have under order of the Court been paid into Court to await decision as to their disposition.

The tobacco of plaintiffs was sold to buyers for shipment to other States and to foreign countries. The manufacture of tobacco in Georgia is negligible. The Florida plaintiffs brought their tobacco into Georgia to market it at the warehouses, where sales are customarily made, as a sort of tobacco exchange.

The tobacco business as a whole is essentially a matter of interstate and foreign commerce. A number of States produce some tobacco, but the bulk of it is produced in the six States of Virginia, Kentucky, North Carolina, Georgia and Florida. It is consumed everywhere. It is manufactured extensively in Virginia and North Carolina and in many non-producing States. Over half of the tobacco produced is exported to foreign countries. It is sold by producers in market towns, for the most part in warehouses maintained for the purpose, during seasons of only a few weeks. The price is fixed by the buyers, mainly manufacturers and exporters, who are supposed to compete as purchasers. The demand is practically stable from year to year, but the supply of tobacco is very variable, depending not only on the acreage planted but also on uncontrollable factors of weather, pests and misfortune. Tobacco when further cured and packed away will keep indefinitely and is improved by aging; and manufacturers maintain large stocks of it. When the supply does not exceed the normal demand the manufacturers compete in buying and the price is relatively high. When the supply is excessive the buyers hold off, the price is greatly depressed, sometimes below the cost of production. Average prices in recent years have varied from twenty-seven cents per pound to as low as eight cents. The price variations are not local but countrywide.

Commerce in tobacco in the United States is very extensive and of public importance. Over 700,000 families are engaged in producing it and over 300,000 in producing the kind of tobacco quotas on which are here involved. Around a billion pounds are produced annually and the manufactured product exceeds in value a billion dollars. Before passing the Act in question Congress made very thorough and deliberate investigation of the business, holding many hearings about it. The Act was not hastily passed but represents the considered and matured conclusion of the Legislature. As stated in Section 311 it was found as a fact that "the marketing of tobacco constitutes one of the great basic industries of the United States with ramifying activities which directly affect interstate and foreign commerce at every point, and stable conditions therein are necessary to the general welfare. Tobacco produced for market is sold on a nationwide market and with its products moves almost wholly in interstate and foreign commerce from the producer to the ultimate consumer * * *. The disorderly marketing of such abnormally excessive supplies affects, burdens and obstructs interstate and foreign commerce" in ways stated. "Whenever an abnormally excessive supply of tobacco exists * * * the operation of the provisions of this Part becomes necessary in order to promote, foster and maintain an orderly flow of such supply in interstate and foreign commerce". If a court may question such legislative fact findings, in this case the legislature has found truly.

An abnormally excessive supply of tobacco was in prospect when the Act was passed on Feby. 18, 1938. The Secretary of Agriculture so found under its provisions. A national quota was fixed and proclaimed on that very date, and on March 16 submitted in a referendum to the producers, who approved it by a vote of about six to one, though only 62% of Georgia producers voted for it. How the plaintiffs voted does not appear. The State quotas at once followed by mathematical computation. The farm quotas were not definitely fixed till June. Some adjustments were made in these as late as August, but they were enlargements and did not prejudice any plaintiff. The quotas were fair and according to the Act and Regulations. When the Act was

passed the plaintiffs had planted their seeds in beds, and the plants were probably up and growing. When the referendum was held in March the land had been prepared and fertilized, though most plants were not transplanted till about April 1. When the farm quotas were definitely made in June the crop had been cultivated and was approaching maturity. When the marketing was done in August each plaintiff knew what his quota was.

Conclusions of Law.

1. The provisions of Sects. 312, 313 and 314 of the Agricultural Act of 1938 are regulations of interstate and foreign commerce within the power given Congress by the Constitution.

2. The provisions as to fixing farm quotas in Sect. 313 (b) are not so indefinite as to deny due process of law or to vest unconstitutionally legislative power in the Secretary of Agriculture.

3. The provisions of Sect. 312 (d) for making quotas for the 1938 crop while entailing some hardship on growers who had already planted their crops, do not operate to deprive them of property without due process of law.

SAMUEL H. SIBLEY,
United States Circuit Judge.
C. B. KENNAMER,
United States District Judge.
BASCOM S. DEAVER,
United States District Judge.

Filed Oct. 7, 1938. George F. White, Clerk.

THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA, VAL-
DOSTA DIVISION.

IN EQUITY.

No. 97.

JAMES H. MULFORD, *et al., Plaintiffs,*

vs.

SMITH *et al., Original Defendants,* and UNITED STATES OF AMERICA, *Intervening Defendant.*

his cause came on for final hearing upon an agreed
ement of facts before a Court composed of Honorable
uel H. Sibley, United States Circuit Judge, Honorable
com S. Deaver and Honorable Charles B. Kennamer,
rict Judges, and was argued by counsel, and decision
rved. The Court being now fully advised in pursuance
findings of Fact and Conclusions of Law filed herewith,
considered and decreed by the Court:

That Sections 312, 313 and 314 of the Agricultural Ad-
ment Act of 1938, exhibited in the petition, are constitu-
al and valid as against the attacks made by the plaintiffs
eon.

That the application of the Act to the marketing sea-
of 1938 is not unconstitutional, but the quotas fixed
eunder for the marketing of plaintiffs' tobacco are valid
binding, and marketing by them of tobacco in excess
ch quotas may validly be penalized according to the Act.

The injunction prayed for is denied, and the restrain-
rder heretofore granted is dissolved. The funds in the
ls of the Clerk are to be returned to the parties who
them in, for disposition according to law. Should any
ites arise touching said fund, jurisdiction is reserved
ear and determine it.

4. The bill is dismissed, and costs are adjudged against the plaintiffs in favor of the defendants, to be taxed by the Clerk.

This October 5, 1938.

SAMUEL H. SIBLEY,
United States Circuit Judge.
C. B. KENNAMER,
United States District Judge.
____ ____,
United States District Judge.

Filed Oct. 7, 1938. George F. White, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, VALDOSTA DIVISION.

IN EQUITY.

No. 97.

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vs.

NAT SMITH *et al., Original Defendants, and* UNITED STATES OF AMERICA, *Intervening Defendant.*

SIBLEY, *Circuit Judge:*

Some of the reasons supporting the foregoing Conclusions of Law may profitably be stated.

It is mainly urged for plaintiffs that the part of the Act in controversy is not a regulation of interstate and foreign commerce but is a regulation of all sales of tobacco by producers whether for export from the State or for manufacture and consumption within the State, and whether large or small; and that the real purpose and effect of it is to regulate and restrict the production of tobacco, which is a local activity. We may concede that agriculture, mining, manufacture and the like are in themselves local activities the regulation of which generally belongs to the States and not to Congress. So are sales made within the State

ntended at the time to result in removing the goods
the State. But it may not be maintained that such
sically local matters do not under some circumstances
ne so interwoven with interstate and foreign commerce
render it necessary and proper for Congress to effect
ntrol them in order to regulate the interstate and for-
commerce which springs from them. The power of
ress to regulate such commerce is paramount and is
broad. If regulation of any kind is needed, the Con-
and not the State must furnish it; and it may be of
kind not prohibited by other constitutional provisions.
ate prior to the Union would so have regulated by vir-
of its general police power. After the Union, this
re of the police power vests in the Congress. Within
here, the power of Congress is in its nature a police
r to be exerted for the public good and in any way, not
ibited, which Congress deems calculated to achieve the
ed regulatory effect. This may involve, as above
d, the affecting or controlling what would usually per-
to the State police power. This intrastate rates may
ntrolled by Congress when so involved with interstate
nerce as to make it necessary. Possession of intoxi-
g liquor under prohibition was controlled by Congress
gh its constitutional power extended only to the manu-
re, transportation and sale thereof. Very extensive
lation of the production of distilled liquors has always
allowed to secure payment of the federal taxes on the
rs, though such production would otherwise be only
tate concern. But the law in controversy does not di-
y regulate the production of tobacco. It does not penal-
r forbid the production of any amount the grower
es. He may do what he likes with it except to market
Since most tobacco is grown only to be sold, the inabil-
sell the excess of a quota except at a loss at least of all
t would tend to and probably would result in the non-
uction of the excess so far as the grower can prevent
But the Act directly deals only with the marketing, and
with the planting or production of tobacco.
nce marketing is an act of commerce, like transporta-
if marketing in interstate and foreign commerce alone

had been regulated there would be no fair doubt of the power of Congress generally to regulate. The trouble arises from the inclusion of all sale of tobacco by producers. Congress rests that inclusion on its right to regulate not particular sales as such, but the commerce in tobacco as a great whole, because it is overwhelmingly a matter of interstate and foreign traffic, and so unified in fact as that it must be dealt with generally and on a nation-wide scale. The price to producers, the stability of which is asserted by Congress to be a main concern both because the support of hundreds of thousands of persons depends on it, and because it in turn controls the amount of tobacco which will be grown and if too low may destroy the industry altogether, is a countrywide matter. No State acting alone could wisely or effectively regulate the situation. Conflict and reprisals would almost certainly follow State effort. In Georgia all tobacco, except a negligible amount, is sold for export from the State, and this is predominantly true in all the States which produce tobacco. The commerce in it is in fact overwhelmingly interstate and foreign. The stable supply to meet the stable demand and to result in a stable price which Congress seeks to achieve can in its judgment practically be reached only by a countrywide regulation controlling the entire market. Courts may not overrule the considered judgment of Congress on the point, where the conclusion is not clearly irrational and arbitrary. They must enforce the law without questioning its wisdom or effectiveness. Should Congress (except in a case of clear usurpation), seek unjustifiably to control matters which ought to remain with the States the issue becomes so far political that solution might better be had in the elections as of a public question between the States and the Union than in the courts at the instance of private litigants.

The Act is not a price-fixing one. The price is still fixed by the will of buyer and seller, and more remotely by the circumstances that normally affect prices. It seeks merely to stabilize one of those circumstances, to wit, the available marketable supply for the year. Protective tariffs affect prices similarly. It does not take the property of any producer. It affects the value of his excess, if intentionally

intentionally he makes more tobacco than his quota, e has to hold it for another quota year, or else use some other way. In so far as it takes his *liberty* of g what is his own for what he can obtain for it, or ectly affects his *liberty* to plant what he pleases on wn land, the taking is not without due process of law s the ordinary restraint of liberty which accompanies exercise of police power for the public good. One be prohibited by competent authority from raising or g tobacco if by so doing he injures others. *Sec Utere t alienum non laedas*, a nounless maxim, qualifies both roperty and the liberties of everyone.

is particular Act does not fail for vagueness in the ards for fixing quotas, nor leave anything to the Sec- y so as to make him legislator. The language of Sect.) refers to farm quotas, and in speaking of "past mar- g of tobacco" means the marketing from each several and so in reference to considering "land, labor and ment available for production of tobacco" reference is to each farm. These are the things that one would ally consider in fixing fair quotas for individual farms; hey furnish a sufficient legislative guide, and they were factorily applied to these plaintiffs.

e application of a quota in 1938 after crop prepara- had begun may entail some hardship and loss but does eprive of property without due process of law. When ct was passed in February, preparations had not pro- d far. Even in March when the referendum made it n there would be a quota it was not too late to plant of the tobacco land in other crops, at a loss only of of the young plants. The Act does not penalize one aving prepared too much land or having started too young plants, but only for selling too much tobacco as afterward. Had the quotas been fixed in December, reafter they will be, many producers would have pro- an excess anyhow, the season having been unusually able. That chance always must exist. If the conduct penalized has not happened and may be avoided when nal law is passed there is no constitutional transgres- lthough some preparation may have been made to do

it. Witness the fate of liquor stocks when laws pr
their sales were passed. The excess tobacco, it is
would spoil if kept unless further treated, and p
had no facilities for treating it. But all that is sold
treated by the purchasers. The growers, foresee
cesses, could have arranged to have their unsalable
processed, either by shipping it elsewhere or by con
a warehouse into a processing plant. At any rate it
their burden.

The penalties incurred by wilful sales this year of e
tobacco must be paid.

Filed Oct. 7, 1938. George F. White, Clerk.

IN THE DISTRICT COURT OF THE UNITED STA
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On the Bill of Complaint and the Stipulation of Fa
made by the Complainants and the Defendants, I believe
decree I am signing is proper.

I concur in the results reached by Judge Sibley, but
entirely in the reasoning or opinion.

C. B. KENNAMER,
United States District Judge.

Filed Oct. 21, 1938. W. E. Perry, Deputy Clerk.